IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1294 OF 2004

Sadashiv Dnyanu Pawar ...Appellant

vs.

Balasaheb Ganpatrao Shinde & Ors. ...Respondents

Mr.R.V.More for the Appellant
Mr.R.S.Apte i/b Mr.M.V.Limaye for Respondent Nos. 1 to 4.

CORAM: A.S.OKA,J.
DATE : MARCH 17,2005.

P.C.:

1. Heard Advocates for the parties. The Appeal is by original Defendant. The decree passed in favour of the Respondents-Plaintiffs is for possession of the suit house.

2. Shri More for the Appellants submitted that the letters at Exh.79/1 and 79/4 written by deceased Ganpatrao i.e. father of the Respondents-Plaintiffs clearly shows that the Appellant was paying monthly rent to deceased Ganpatrao. He submitted that the said letters were proved in evidence by the Appellant. He submitted that the said letters ought to have been exhibited.

3. The courts below have recorded the reasons for holding that the letters are not admissible in evidence. It is pertinent to note that the Appellant did not confront the witness examined on behalf of the Respondents by showing the

said letters in cross examination. In the circumstances, no fault can be found with the finding of the Appellate Court that the letters were not duly proved and were not admissible in evidence. Once, it is found that the said finding is correct, there is no other evidence in support of the plea of tenancy of the Appellant. Admittedly, the Respondents are the owners of the suit house.

4. In this view of the matter, no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

5. At this stage Mr.More for the Appellant submitted that the Appellant is in possession of the suit house for substantially long time and therefore time to vacate may be granted. The said request is opposed by the learned Counsel for the Respondent. Considering the facts and circumstances, notwithstanding the dismissal of the Appeal, decree for possession shall not be executed till 31st January 2006 subject to the Appellant and all adult members of his family filing an usual undertaking in this Court within a period of four weeks from today. If the undertaking is not filed within stipulated period, decree for possession will become executable forthwith.

JUDGE.